

**FORM FOR USE IN APPLICATIONS  
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254**

RECEIVED

TERRY LIGON  
Name 2005 AUG -1 A 9:16  
#220217  
Prison Number EDNA P. HANCOCK, CLK  
VENTRSS CORRECTIONAL FACILITY  
P.O. Box 767, Clayton, Al. 36016-0767  
Place of Confinement U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA  
United States District Court MIDDLE District of Alabama  
Case No. 3:05cv707-F  
(To be supplied by Clerk of U. S. District Court)

TERRY LIGON, PETITIONER  
(Full Name) (Include name under which you were convicted)

J.C. GILES, Warden., RESPONDENT  
(Name of Warden, Superintendent, Jailor, or authorized person  
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF TROY KING  
, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN  
STATE CUSTODY**

**INSTRUCTIONS--READ CAREFULLY**

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies \* must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711  
Montgomery, Alabama 36101

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- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**\*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

#### PETITION

1. Name and location of court which entered the judgment of conviction under attack \_\_\_\_\_ CIRCUIT COURT OF Russell County, Phenix City, Al. \_\_\_\_\_
2. Date of judgment of conviction \_\_\_\_\_ November 11, 2001 \_\_\_\_\_
3. Length of sentence \_\_\_\_\_ 25 years \_\_\_\_\_ Sentencing Judge \_\_\_\_\_ Greene \_\_\_\_\_

4. Nature of offense or offenses for which you were convicted: \_\_\_\_\_  
Murder (reckless) 1 count, Assault 1st degree, 4 counts  
\_\_\_\_\_  
\_\_\_\_\_
5. What was your plea? (check one)  
(a) Not guilty ( )  
(b) Guilty (x)  
(c) Nolo contendere ( )  
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_  
Not Applicable  
\_\_\_\_\_  
\_\_\_\_\_
6. Kind of trial: (Check one)  
(a) Jury ( )  
(b) Judge only (x)
7. Did you testify at the trial? Yes ( ) No (x)
8. Did you appeal from the judgment of conviction? Yes ( ) No (x)
9. If you did appeal, answer the following:  
(a) Name of court \_\_\_\_\_  
(b) Result \_\_\_\_\_ Not Applicable  
(c) Date of result \_\_\_\_\_  
If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (x) No ( )
11. If your answer to 10 was "yes", give the following information:  
(a) (1) Name of court \_\_\_\_\_ Circuit Court of Russell County, Phenix City, Al \_\_\_\_\_  
(2) Nature of proceeding \_\_\_\_\_ Rule 32, A.R.Cr.P. for postconviction relief. \_\_\_\_\_  
(3) Grounds raised \_\_\_\_\_ Ineffective Assistance of Counsel \_\_\_\_\_  
Murder Conviction - not enough evidence, evidence  
contadicts what is needed for a factual conviction.  
Double Jeopardy, as to 4 counts of Assault  
\_\_\_\_\_  
\_\_\_\_\_  
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (x)  
(5) Result \_\_\_\_\_ Dismissed as not specific, \_\_\_\_\_  
(6) Date of result \_\_\_\_\_ March, 2004. \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court Russell County Circuit Court

(2) Nature of proceeding Rule 32, A.R.Cr.P.

(3) Grounds raised Misrepresentation of Material Facts to the Trial Court by the Prosecutor and Appointed Defense Counsel for Petitioner. Ineffective Assistance of Counsel

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (x) partial

(5) Result Denied- Court would not grant pauper status or payments

(6) Date of result XX January, 2005

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court N/A

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ) No (x)

(2) Second petition, etc. Yes ( ) No (x)

(3) Third petition, etc. Yes ( ) No ( )

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: \_\_\_\_\_

Petitioner did appeal the first Rule 32 petition to the Ala. Crim.Court of Appeals, however because of the procedural irregularities incurred by the trial court, petitioner could not raise or advance his claims effectively nor could he bringup the claims of misrepresentation of materialfacts by

the prosecutor and his defense attorney without first raising it in the lower court, even though petitioner asked for a stay on the appeal, before any

Briefing was done, to raise the issue in the lower court, and present uncontavertable evidence (sworn depositions) to the court as to the injuries suffered by the victims, and what the prosecutor and counsel led the court and petitioner to believe they suffered, which contadicts the elements needed for an Assault 1st degree conviction.

**12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.**

**CAUTION:** In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- ✓ (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- ✓ (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ✓ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one:** INEFFECTIVE ASSISTANCE OF COUNSEL AND MISREPRESENTATION OF MATERIAL FACTS TO PETITIONER AND THE COURT.

**Supporting FACTS** (tell your story briefly without citing cases or law):

SEE SHEETS ATTACHED

- B. Ground two:** Murder Conviction and Assault 1st degree not warranted by the facts and evidence . x Prosecutor Misconduct.

**Supporting FACTS** (tell your story briefly without citing cases or law):

SEE SHEETS ATTACHED

- C. Ground three:** Procedural Irregularities by the Trial Court and the Prosecutor's Office prevented petitioner to properly advance his petition.

**Supporting FACTS** (tell your story briefly without citing cases or law):

SEE SHEETS ATTACHED

D. Ground four: \_\_\_\_\_

Supporting FACTS (tell your story briefly without citing cases or law):

\_\_\_\_\_  
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13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

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14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes ( ) No ( ☒ )

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_ Jeremy Armstrong, Phenix City, Al.

(c) At trial \_\_\_\_\_

Same as above

(d) At sentencing \_\_\_\_\_

Same as above

(e) On appeal \_\_\_\_\_

None



I.)

GROUND ONEINEFFECTIVE ASSISTANCE OF COUNSELFACTS IN SUPPORT

Petitioner asserts that his counsel was not only ineffective, but also did not disclose the "true injuries" to him prior to his taking the plea of guilty, and also misrepresented the injuries to the court. Petitioner plead guilty to 4 counts of Assault 1st degree, which requires that the victims sustain "serious physical/bodily injury" in order for the court to accept the plea of guilty as required by Rule 14, A.R.Cr.P.. Petitioner asserts that none of the victims did in fact sustain "serious physical/bodily injury", and that one of the victims did not suffer any injuries at all. Petitioner's counsel misrepresented the injuries to him and kept telling him that he was in a lot of trouble, and if he went to trial he would be found guilty by the jury when the victims testified as to their injuries. Counsel told petitioner that he would receive a Life sentence, if he did not plead guilty, because, then Governor, Don Seigleman wanted "drunk drivers" to be treated very harshly.

Petitioner's counsel never investigated or interviewed the victims to actually see or illicit by a statement the type of injuries they received from the accident, yet the medical reports of the victims' was in his possession which showed that they did not receive serious physical/bodily injury. Counsel never told this fact to petitioner, rather, counsel did tell him they suffered broken bones and internal injury, petitioner believed his counsel, until the friend of his family told him that none of the victims suffered any serious injuries. When petitioner was informed of this, he then asked counsel for all of his file. When he received the file he read the police reports and in one of the reports, one of the victims states what she did immediately after the accident, her physical movements, actions, and demeanor did not give rise to having any "serious physical bodily injury" and that caused petitioner to investigate further. The EMT that transported the victims to the hospital told the sister of one of the victims that her sister was faking. Upon review of the documents sent to petitioner by counsel it left a big question mark in his mind as to the injuries suffered by the 4 occupants that were involved in the accident and which led to the Assault 1st degree charge and conviction.

Petitioner's counsel was ineffective to him and misrepresented the injuries of the victims to the trial court. Petitioner would show this court by clear and convincing evidence that he is innocent of the Assault 1st degree charges, and that but for counsel's ineffective assistance and the misrepresentation of material facts to him and the trial court no reasonable factfinder would have found him guilty of the charge.

(1.)



GROUNDWORK (cont.)

Petitioner would show this court that the facts surrounding this particular case do not comport to the conviction of Murder or Assault 1st degree. The evidence petitioner would submit shows that counsel was ineffective in his assistance to petitioner and only wanted to plead the case out quickly. e.g. (1.) The location of the vehicles after the accident was not a true rendition of where petitioner's vehicle originally stopped. The police asked him to move the truck as it was impeding traffic flow, and then they took measurements to determine the speed he was driving. (2.) The marks on the pavement where the impact of vehicles happened are not from this accident, as the victim's testified in the depositions that there was several other accidents at the very same spot, where other drivers also were making a lefthand turn to crossover the highway to get to the other side where there was a road going East to West, this is where the victim's Mother lived. The highway that the accident occurred on was North to South, and the victim was making an illegal left-hand turn crossing over double yellow lines (solid). Counsel never investigated these facts for if he did he could have presented them to the court and petitioner, to give him the opportunity for a lesser charge (vehicular homicide) or to go to trial. Petitioner avers that two wrongs (his driving under the influence) and the victim's illegal turn do present a viable argument for the lesser charge.

Petitioner's counsel never showed him the police diagram of the vehicles, or the medical reports of the victims that he received during discovery. Counsel never said anything to him about all the accidents that happened in the same spot. Counsel never said that Cornelius Law (the three-year old child) never sustained any injuries from the accident. These facts do present a picture of counsel not advocating for petitioner and most certainly rise to the level of ineffectiveness, for not making the adversarial process work. Petitioner did infactically state in his Rule 32 petition "How does counsel justify anconviction for Assault 1st degree without 'serious physical/bodily injury?'" This statement would alert the trial court that something is wrong. Petitioner did not have in his possession at that time of the filing (or so he thought being that his copy of the Rule 32 was stamped("Filed on October 30, 2002) the depositions of the victims. When he did receive them he was waiting for the prosecutor's response to the above statement in his Rule 32 petition of counsel being ineffective. Therefore he never was able to present the depositions to the trial court in a procedural manner, as the court summarily dismissed the petition when he had to file an Mandamus with the court of appeals. Then petitioner had to file a notice of appeal to see if the appellate court would be convinced of this claim, which it ruled procedurally barred for not presenting it to the lower court first. Petitioner did try to get the appeal stayed before any briefing was done so he could return to the lower court, but the appellate court denied his motion.

II)

PROSECUTOR MISCONDUCTFACTS

Petitioner's conviction was obtained by the unconstitutional failure of the prosecutor to disclose to defendant and the trial court evidence favorable to the defendant. The prosecutor purposely misled the trial court by the misrepresentation of material facts during the plea of guilty colloquy. The State would argue that this petition for relief is procedurally barred, but such is not the case, and should be determined by this court. The State withheld exculpatory material from the trial court and petitioner, thereby depriving him of a "fair trial", and rendering the trial court to be without jurisdiction to accept his plea of guilty, whereby his convictions to the charges of which he plead guilty must be vacated and a new trial ordered, for a "miscarriage of justice" has been committed by the prosecutor's office and petitioner's counsel.

"The facts underlying this claim would be sufficient to establish by clear and convincing evidence that but for this constitutional error no reasonable fact-finder would have found the applicant guilty of the underlying charge."

Petitioner was convicted of Murder (reckless) and 4 counts of Assault 1st degree stemming from an automobile accident in which his vehicle struck the back of another vehicle. Petitioner would show this court that the facts do not comport to what he plead guilty to, and therefore, he is due to have a new trial.

Assault 1st degree requires that the victim sustain "serious physical injury", petitioner asserts that none of the 4 victims suffered "serious physical/bodily injury". The trial court asked the State whether the victims suffered "serious physical/bodily injury", to which the State replied that they did, and counsel for the petitioner affirmed stating his extensive reading of the file and the facts therein. There was no other evidence submitted to the trial court other than the testimony of the two court officers. Petitioner believed what the State said during the plea hearing because his lawyer stated the same injuries to him prior to him deciding to plead guilty. (See: Petitioner's exhibit marked #4.)

**FACTS (cont.)**

Petitioner avers that what is of particular importance in this case is that one of the victims did not suffer any injuries at all, and would make a reasonable person think, how did the Grand Jury find an indictment for Assault 1st degree? Yet, petitioner was convicted of an Assault 1st degree that never should have been, but for the prosecutor and counsel's misrepresentation of the material facts to the trial court and him, thereby, rendering the plea of guilty void, because petitioner was deprived of a "fair trial", a trial whose results are reliable. Petitioner avers that his Fifth; Sixth; and Fourteenth Amendment rights to the U.S. Constitution, have been denied to him. These provisions generally guarantee one accused of crime in this State the right to have a trial by judge or jury that is fundamentally fair in all aspects. Further, "that deliberate deception of a court or jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'". See: Mooney v. Holohan, 294 U.S. 103, 112 (1935).

Petitioner would show by the facts, testimony, and law that the above claim is valid and that this court should consider this petition in the most liberal of terms as petitioner is a pro-se litigant and not formally trained in the aspects of the justice system, procedurally or formalities and law. See: Haines v. Kerner, 404 U.S. 519 (1972); Haggard v. Alabama, 494 F. 2d 1187, 1189 (5th Cir. 1974); and Dickson v. Wainwright, 683 F. 2d 348, 351-52 (11th Cir. 1982).

Petitioner avers that because of the above facts it was impossible for him to give a voluntary, intelligent and knowingly plea of guilty. Petitioner was deprived of his Constitutional rights guaranteed by the **Fifth, Sixth, and Fourteenth Amendments** therefore, this petition should be granted and a new trial Ordered.

(f) In any post-conviction proceeding \_\_\_\_\_ None \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_  
None \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ( ☒ ) No ( )

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ( ) No ( ☒ )

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_ N/A \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ( ) No ( )

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 7-29-05  
(date)

Terry Ligon  
\_\_\_\_\_  
Signature of Petitioner

TERRY LIGON, #220217  
V.C.F.- P.O. Box 767  
Clayton, Al. 36016-0767